IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.652 OF 2000

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

RAJUMIYA HANIF SAIYED
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:
MR PB KADAM FOR PETITIONER
MR SAMIR DAVE APP FOR RESPONDENTS

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 27/2/2001

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. The facts of the case are that the petitioner is a suspended police constable. The FIR was lodged against him in the year 1992 for the offence under the Arms Act and Indian Explosives Act. After investigation, chargesheet was filed in the year 1998. It is a different matter that ultimately he came to be discharged by the Sessions Court concerned.

#. It is the say of the petitioner that on 8.1.2000, at about 5:00 p.m., in the evening when he was going at Dargah for prayer, one police constable Mohammed Iqbal Usmanmiya Malek was also with him. At that time, one tanker bearing GJ-9-6004 was passing. The petitioner is stated to have received a secret information from spy that there is a blue kerosene which is being sold in the black market and the said tanker is coming from Sareem Petroleum near Kalidas Mill Compound, Gomtipur and one Fareedbhai and Nazeembhai were looking after the same. The petitioner and constable followed the tanker and opposite Evergreen Hotel, Shiv Shakti Estate Godown, near Narol, the tanker stopped. The petitioner went there and asked the names of the person present there. He replied that his name is Harshad Jain. The blue kerosene of said tanker was being shifted to drums and the tanker was made empty. The petitioner made three phone calls to the police control room, i.e. respondent No.4. herein. It is the say of the petitioner that the respondent No.4 replied to him that the police mobile van will be sent but mobile van did not come. The petitioner then contacted respondent No.3 at his residence but it was replied from his house that he was not available and a mobile number was given of that officer. He was contacted by petitioner on mobile phone. The respondent No.3 is stated to have replied that he is sending his officers at the mentioned place. The petitioner then contacted the Chief of the Flying Squad of the Food and Civil Supplies Department, namely Mr.J.T.Jani and he told that he is coming with the staff at the place immediately. Thereafter it is averred that four persons arrived at the place on one motorcycle and scooter. Out of them, the petitioner was knowing two of them and they were Mr.N.D.Rval and Mr.M.C.Patel who are Civil Supplies Inspectors. Thereafter, one Nazimbhai came and threatened the petitioner that let the tanker go and he is having high influence in the Government. At that time, two inspectors were present who made the petitioner talk to Mr.Jani on phone. He talked to Mr.Jani on phone and he said that if the chapter can be closed with some give and take, let them go and do not spoil the festival of Idd. The petitioner, what he states, was surprised as

no support was given to him. Therefore, the petitioner gave key to Mr.N.D.Raval and stated to do whatever he likes in accordance with law. It is submitted that the petitioner deflated the tyre of the vehicle. The Flying Squad thereafter came at 23:00 hrs. and made some documents which the petitioner came to know afterwards and those were stated to be not in accordance with law and a totally new story was being created. The petitioner submitted that as he caught the said tanker there, he has all the apprehension of he being involved in the false cases. In paragraph 4.5, the petitioner has given out that at the office of Sareem Petroleum other two agencies, namely, (1) Bushneem Petroleum and (2) Aapabhai R. Patel are being managed. Both the agencies are of kerosene dealership and the tanker in which blue kerosene was coming was of the Aapabhai R. Patel agency which is being black marketed and which was caught. Hence against these agencies, what he complained that no action is being taken. The petitioner has stated that he gave information and nothing happened. Thereafter, the petitioner gave an application on 18.1.2000 to respondents No.2 and 3. The petitioner has followed all the formalities and till today no action in the matter is taken. He is also stated to have given an application to the State Vigilance and the Collector, Ahmedabad. The petitioner grievanced that the said tanker was carrying illegal blue kerosene and the person involved in the matter are highly influential and as some officers of the Food and Civil Supplies are involved, nothing has ben done in the matter. So this petitioner stated that he is filing this petition.

#. In paragraph-7, the petitioner stated that an affidavit against the officer of the Food and Civil Supplies Department was made. Therefore, the officers of the said Department prepared a case under Prevention of Black Marketing Act against the petitioner and put the file before the Collector and the Collector passed an order of detention under the Prevention of Black Marketing Act on 8.2.2000 and the petitioner was detained on 10.2.2000 at Porbandar Jail. The petitioner challenged that order in this court in Special Civil Application No.2789 of 2000. This Court on 22.6.2000 quashed that order. The petitioner has however not produced on the record of this special criminal application, a copy of the order of this court passed in that special civil application.

#. In paragraph-12 of the petition, the petitioner admitted that in connection with the matter, he received a letter dated 4.6.2000 at the present address from the

Deputy Secretary, Food and Civil Supplies Department, to give necessary evidence or statement in connection with the tanker aforesaid. It is the grievance of the petitioner that the officer of the Food and Civil Supplies Department gave that letter knowing fully well, at the time when the petitioner was in detention. The petitioner prayed for issuance of a Writ of Mandamus or any other direction or order directing the respondents No.2 and 3 to register an offence under the Essential Commodities Act against the persons involved in the offence. It is further prayed to initiate inquiry against the concerned persons of Food and Civil Supplies Department who are responsible for not registering an FIR. It is also prayed to direct the investigation of seizure of Tanker No.GJ-9-6004 to be given to Crime branch or to higher police officer of any police station in Ahmedabad or State Vigilance Commission, Gandhinagar or CBI.

#. Reply to the special criminal application has been filed by respondents No.3 and 4 and State of Gujarat.

#. The petitioner, in paragraph-13 of the special criminal application stated that CBI, Gandhinagar is investigating the matter in connection with the fraud committed by the IOC. He urged that the present investigation of the said tanker be given to CBI.

#. From the reply to the special criminal application filed by respondents No.3 and 4, I find that some inquiry has been made in the matter, licence of the agent has been cancelled, deposit of kerosene has also been ordered to be forfeited. In the matter of such complaints, the petitioner's own antecedents may not be relevant and such complaints are to be taken seriously by respondents. It is a general complaint from the public at large, how far it is correct or not is a different matter, that agents are black marketing petroleum products, kerosene etc., they are doing adulteration in petroleum products, etc. CBI is also making investigation undisputedly in the matter in connection with the fraud committed upon the Indian Oil Corporation.

#. There is a very wide scope of that investigation and CBI has to make investigation in that matter from all aspects. There may be all possibility, if what the petitioner states to be correct, of linkage of these persons with the alleged fraud committed by the officers of the Indian Oil Corporation. In such matters, the petitioner has better to approach the CBI and place all this material before that authority and if that authority

considers that there may be some linkage of these persons with the alleged fraud of the officers of the Indian Oil Corporation, it may be a matter of investigation there. It is not restricted to only one aspect. Once investigation is undertaken by CBI, it will take into consideration all aspects of the matter including involvement of the persons of black marketing of these products as well as of adulteration in petroleum products etc. The petitioner is free to bring all these facts to the notice of the CBI in the form of filing a detailed affidavit and giving out all the relevant material with him and the CBI may look into the matter. This petition, with these observations and the liberty given to the petitioner, is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. In the facts of the case, no order as to costs.

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(sunil)